

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

JOHN CRAIG HAYNES	:	
Plaintiff	:	CIVIL ACTION NO. 3:18-1837
v.	:	(MANNION, D.J.)
		(SCHWAB, M.J.)
DR. PRINCE, et al.	:	
Defendants	:	

ORDER

Presently before the court is the report and recommendation of Magistrate Judge Susan E. Schwab (“Report”), which recommends that the plaintiff John Craig Haynes’ (“Haynes”) complaint be dismissed with leave to file an amended complaint. ([Doc. 21, at 18](#)). Haynes filed objections to Judge Schwab’s Report on May 23, 2019. ([Doc. 23](#)). Haynes’ objections seek leave to file an amended complaint—the same relief that Judge Schwab recommended in her Report. ([Doc. 23, at 2](#)).

For those sections of the report and recommendation to which no objection is made, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” [Fed.R.Civ.P. 72\(b\)](#) advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469

(M.D.Pa. 2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); M.D.Pa. L.R. 72.31.

The motion to dismiss that is the subject of Judge Schwab’s Report was filed by Dr. Scott Prince (“Prince”). (Doc. 16). Haynes alleged two claims against Prince—medical malpractice and deliberate indifference to a serious medical need. This court agrees with Judge Schwab that Haynes’ deliberate indifference claim against Prince fails because “Haynes [plead] no facts showing the Prince was involved in any inadequate medical care provided to Haynes” (Doc. 21, at 16). As to Haynes’ medical malpractice claim against Prince, this court agrees with Judge Schwab that Haynes failed to comply with Pennsylvania Rule of Civil Procedure 1042.3. (Doc. 21, at 16-17). Specifically, Haynes failed to include the written statement that Pa.R.Civ.P. 1042.3(e) requires.

Judge Schwab concludes with a recommendation that Haynes’ complaint be dismissed. (Doc. 21, at 18). Considering the foregoing, this court agrees with the sound reasoning, which led Judge Schwab to recommend that Haynes’ complaint be dismissed as to Prince.

In addition, this court notes that several defendants have not yet been served with process. Under Federal Rule of Civil Procedure 4(m), “[i]f a defendant is not served within 90 days after the complaint is filed, the court . . . on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” This matter is left to be resolved by Judge Schwab on remand as she sits in the best position to determine the best course of action to address this issue.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1)** Judge Schwab’s Report ([Doc. 21](#)) is **ADOPTED IN ITS ENTIRETY**;
- (2)** Haynes’ objections ([Doc. 23](#)) are **DISMISSED AS MOOT**;
- (3)** Haynes’ complaint ([Doc. 1, at 24-41](#)) is **DISMISSED** as to Prince;
- (4)** Haynes is **GRANTED** leave to file an amended complaint on or before **July 29, 2019**;
- (5)** The Clerk of Court is directed to **AMEND** the caption of this case to reflect the remaining parties; and
- (6)** This case is **REMANDED** to Judge Schwab for further proceedings.

s/ Malachy E. Mannion

MALACHY E. MANNION
United States District Judge

DATE: June 28, 2019

18-1837-02